

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SIDDHARTH HARIHARAN,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

ADOBE SYSTEMS INC., *et al.*,

Defendants.

Case No. C 11-CV-2509-LHK

**STIPULATED ~~PROPOSED~~ PRETRIAL
ORDER AS MODIFIED NO. 1**

BRANDON MARSHALL, individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

ADOBE SYSTEMS INC., *et al.*,

Defendants.

Case No. C 11-CV-3538-LHK

MICHAEL DEVINE, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

ADOBE SYSTEMS INC., *et al.*,

Defendants.

Case No. C 11-CV-3539-LHK

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MARK FICHTNER, individually and on
behalf of all others similarly situated,

Plaintiff,

v.
ADOBE SYSTEMS INC., *et al.*,

Defendants.

Case No. C 11-CV-3540-LHK

DANIEL STOVER, individually and on
behalf of all others similarly situated,

Plaintiff,

v.
ADOBE SYSTEMS INC., *et al.*,

Defendants.

Case No. C 11-CV-3541-LHK

WHEREAS, individual and representative plaintiffs Siddharth Hariharan, Brandon Marshall, Michael Devine, Mark Fichtner, and Daniel Stover (“Plaintiffs”) have filed complaints (“Complaints”) in the above-captioned actions for alleged violations of the antitrust laws by Adobe Systems Inc., Apple Inc., Google Inc., Intel Corp., Intuit Inc., Lucasfilm Ltd., Pixar, and DOES 1-200 (“Defendants”), pursuant to California’s antitrust statute, Business and Professions Code sections 16720, *et seq.* (the “Cartwright Act”); Business and Professions Code section 16600 (“Section 16600”); and California’s unfair competition law, Business and Professions Code sections 17200, *et seq.* (the “Unfair Competition Law”);

WHEREAS, Plaintiffs seek to proceed on behalf of a proposed class as defined in the Consolidated Amended Complaint (the “Proposed Class”);

WHEREAS, Plaintiffs have agreed to file a master consolidated amended complaint including each of them and superseding the Complaints currently on file;

WHEREAS, consolidation of the Complaints and other like actions will avoid duplication and unnecessary costs, and will promote the efficient conduct of proceedings herein;

NOW, THEREFORE, THE COURT ORDERS:

1 **I. CONSOLIDATION**

2 Each of the above-captioned actions (collectively, the “Consolidated Action”) is hereby
3 consolidated for all purposes pursuant to Federal Rule of Civil Procedure 42(a).

4 **II. MASTER DOCKET AND MASTER FILE**

5 A Master Docket and a Master File under the civil action number that has been assigned
6 to the first-filed case, *Siddharth Hariharan v. Adobe Systems Inc., et al.*, Case No. 11-CV-2509-
7 LHK, are hereby established for the Consolidated Action. All docket entries regarding the
8 Consolidated Action shall be docketed under the Master File number 11-CV-2509-LHK. If a
9 document pertains to only one or some of the consolidated cases, it will be docketed on the
10 Master Docket with the notation in the docket text as to the case number(s) to which it pertains.
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III. APPLICATION OF THIS ORDER TO SUBSEQUENTLY FILED OR TRANSFERRED CASES

When a case which relates to the subject matter of the Consolidated Action is hereafter filed in this Court or transferred here from another court, **and only after counsel call to the attention of the Court and the Clerk the filing or transfer of any such case that might be properly consolidated with this Consolidated Action**, the Clerk of Court shall make an appropriate entry in the Master Docket. Counsel for Plaintiffs in the Consolidated Action shall promptly mail a copy of this Order to counsel for plaintiff(s) in each subsequently filed or transferred related action and to counsel for any defendant(s) in each such action not already a party to the Consolidated Action. Promptly thereafter, upon notice to counsel for the parties in each such action, counsel for Plaintiffs in the Consolidated Action shall submit to the Court a proposed order consolidating any such action with the Consolidated Action. **Unless a party in such newly-filed or transferred action objects to consolidation within ten (10) days after the date upon which a copy of this Order is served on counsel for such party, by filing an application for relief and this Court deems it appropriate to grant such application**, each new case that arises out of the subject matter of the Consolidated Action which is filed in this Court or transferred to this Court, shall be consolidated with the Consolidated Action and this Order shall apply thereto.

IV. CAPTION OF CASES

All papers hereafter filed in the Consolidated Action shall bear the following Caption:

IN RE HIGH-TECH EMPLOYEE ANTITRUST LITIGATION	Master Docket No. 11-CV-2509-LHK
THIS DOCUMENT RELATES TO:	

When a pleading or other court paper is intended to apply to all actions to which this Order is applicable, the words "All Actions" shall appear immediately after the words "THIS

DOCUMENT RELATES TO” in the caption set out above. When a pleading or other court paper is intended to be applicable only to a subset of the Actions, the separate caption and docket number for each individual action to which the pleading is intended to be applicable shall appear immediately after or below the words “THIS DOCUMENT RELATES TO” in the caption described above. The short form of the case caption ([named plaintiff] v. [first named defendant], *et al.*) for such actions may be used.

V. FILING AND DOCKETING

All papers previously filed and served to date in any of the above-referenced actions are hereby deemed part of the record in 11-CV-2509-LHK.

When a paper is filed and the caption shows that it is to be applicable to “All Actions,” such paper shall be filed in the Master File and the Clerk shall note such filing in the Master Docket. Such papers need not be filed, and docket entries need not be made, in any other case file.

When a paper is filed and the caption shows that it is to be applicable to fewer than all of the Consolidated Actions, such paper shall be filed in the Master File, and the clerk shall note such filing in both the Master Docket and the docket of each such action. Thus, the paper should only be filed in the Master File in 11-CV-2509-LHK.

VI. ECF AND SERVICE OF DOCUMENTS

This case is subject to Electronic Case Filing (“ECF”), pursuant to General Order 45, Section VI, which requires that all documents in such a case be filed electronically. If counsel has not already done so, counsel shall register forthwith as an ECF user and be issued an ECF user ID and password. Forms and instructions can be found on the Court’s website at ecf.cand.uscourts.gov.

All documents shall be e-filed in the Master File in 11-CV-2509-LHK. Papers that are filed electronically through the Court’s ECF system are deemed served on all parties as of the date of filing. All other service of papers shall be governed by the Rules of Civil Procedure, unless otherwise agreed by the parties.

1 **VII. PRESERVATION OF EVIDENCE**

2 Until the parties agree on a preservation plan or the Court orders otherwise, each party
3 shall take reasonable steps to preserve all documents, data, and tangible things containing
4 information potentially relevant to the subject matter of this litigation.

5 **VIII. CONSOLIDATED AMENDED COMPLAINT AND RESPONSE**

6 On September 2, 2011, Plaintiffs provided Defendants with a courtesy copy of the
7 Consolidated Amended Complaint. Within two days after an order from the Court consolidating
8 the above-captioned actions, Plaintiffs shall file the Consolidated Amended Complaint. The
9 Consolidated Amended Complaint shall be deemed Plaintiffs' initial filing for purposes of
10 Federal Rule of Civil Procedure 15(a). The Consolidated Amended Complaint shall relate back
11 to the date of the first-filed action, *Siddharth Hariharan v. Adobe Systems Inc., et al.*, Case No.
12 11-CV-2509-LHK, for all purposes. Defendants shall have no obligation to answer, move, or
13 otherwise plead in response to the previously-filed Complaints.

14 Defendants shall answer, move, or otherwise plead in response to the Consolidated
15 Amended Complaint by October 13, 2011. If Defendants respond with a motion to dismiss:

16 a. Defendants, while reserving their rights to file separate motions to dismiss
17 to the extent any deems it necessary to do so, will endeavor to file a single consolidated motion
18 accompanied by a single consolidated memorandum of points and authorities, not exceeding
19 thirty pages in length.

20 b. If Defendants file a single motion to dismiss as described in Paragraph a.
21 above, Plaintiffs shall file a single consolidated opposition memorandum of points and authorities
22 by November 4, 2011, not exceeding thirty pages in length.

23 c. If Defendants file a single motion to dismiss as described in Paragraph a.
24 above, Defendants may file a single consolidated reply memorandum by December 2, 2011, not
25 exceeding twenty pages in length.

26 d. If Defendants file more than one motion to dismiss, the schedule listed
27 above will not change. However, Defendants will so inform Plaintiffs by September 28, 2011,
28 and the Parties shall meet and confer regarding the appropriate length of the opposition and reply

1 briefs. **Defendants must seek leave of the Court, and provide good cause, in order to file**
2 **more than one motion to dismiss.**

3 These deadlines do not alter any deadlines or conference dates previously set by the Court.

4 **IX. ORGANIZATION OF PLAINTIFFS' COUNSEL**

5 1. Pursuant to Federal Rule of Civil Procedure 23(g)(3), the Court designates
6 Joseph R. Saveri of Lieff, Cabraser, Heimann & Bernstein, LLP, as interim Lead Counsel on
7 behalf of all Plaintiffs and the Proposed Class in the Consolidated Action.

8 2. Lead Counsel shall have authority over the following matters on behalf of all
9 Plaintiffs and the Proposed Class in the Consolidated Action:

- 10 a. convening meetings of Plaintiffs' counsel;
- 11 b. the initiation, response, scheduling, briefing, and argument of all motions;
- 12 c. the scope, order, and conduct of all discovery proceedings;
- 13 d. making such work assignments as among themselves and other Plaintiffs'
14 counsel as they may deem appropriate;
- 15 e. collecting time and expense reports from all Plaintiffs' counsel on a
16 periodic basis;
- 17 f. the retention of experts;
- 18 g. the designation of which Plaintiffs' attorneys shall appear at hearings and
19 conferences with the Court;
- 20 h. settlement negotiations and agreements with Defendants; and
- 21 i. all other matters concerning the prosecution of the Consolidated Action.

22 3. No motion shall be filed on behalf of all Plaintiffs in the Consolidated Action
23 except through Lead Counsel or his designee(s).

24 4. Defendants' counsel may rely on all agreements made with Lead Counsel, and
25 such agreements shall be binding on all other Plaintiffs.

26 5. The Court designates the following to act, with Lead Counsel, as members of the
27 Executive Committee on behalf of all Plaintiffs in the Consolidated Action: Eric L. Cramer of
28 Berger & Montague, P.C. and Linda P. Nussbaum of Grant & Eisenhofer P.A. Members of the

Executive Committee shall, on a regular basis, confer regarding the administration and prosecution of the Consolidated Action.

IT IS HEREBY STIPULATED.

Dated: September 6, 2011 LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP

By: /s/ Joseph R. Saveri
JOSEPH R. SAVERI
Attorneys for individual and representative Plaintiffs
Siddharth Hariharan, Brandon Marshall, Michael Devine,
Mark Fichtner, and Daniel Stover

Dated: September 6, 2011 O'MELVENY & MYERS LLP

By: /s/ Michael F. Tubach
MICHAEL F. TUBACH
Attorneys for Defendant
APPLE INC.

Dated: September 6, 2011 KEKER & VAN NEST LLP

By: /s/ Daniel Purcell
DANIEL PURCELL
Attorneys for Defendant
LUCASFILM LTD.

Dated: September 6, 2011 JONES DAY

By: /s/ David C. Kiernan
DAVID C. KIERNAN
Attorneys for Defendant
ADOBE SYSTEMS INC.

1 Dated: September 6, 2011 MAYER BROWN LLP

2
3 By: /s/ Lee H. Rubin

4 LEE H. RUBIN
Attorneys for Defendant
GOOGLE INC.

5
6 Dated: September 6, 2011 BINGHAM McCUTCHEN LLP

7
8 By: /s/ Holly A. House

9 HOLLY A. HOUSE
Attorneys for Defendant
INTEL CORPORATION

10 Dated: September 6, 2011 JONES DAY

11
12 By: /s/ Robert A. Mittelstaedt

13 ROBERT A. MITTELSTAEDT
Attorneys for Defendant
INTUIT INC.

14
15 Dated: September 6, 2011 COVINGTON & BURLING LLP

16
17 By: /s/ Emily Johnson Henn

18 EMILY JOHNSON HENN
Attorneys for Defendant
PIXAR

Filer's Attestation

Pursuant to General Order No. 45, § X(B), I attest under penalty of perjury that concurrence in the filing of the document has been obtained from all the signatories.

Dated: September 12, 2011

/s/ Dean M. Harvey
DEAN M. HARVEY
LIEFF CABRASER HEIMANN
& BERNSTEIN, LLP

1 **IT IS SO ORDERED.**

2
3 Dated: September 12, 2011



HON. LUCY H. KOH
UNITED STATES DISTRICT JUDGE